IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

Bail Appl..No. 4026 of 2007()

AGAINST THE JUDGEMENT/ORDER IN BA.1815/2007 Dated 03/04/2007
CRIME NO.255/07 OF KODAKARA POLICE STATION.

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PETITIONER/3RD ACCUSED

MANOJ, S/O.SUDHAKARAN,
NADUMURI HOUSE, ALOOR.

BY ADV. SRI.RAJESH CHAKYAT

RESPONDENTS:

THE SUB INSPECTOR OF POLICE,
KODAKARA POLICE STATION, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 04/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO.4026 OF 2007

Dated this the 4th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under Sec.399 of the IPC. He along with the co-accused was allegedly found present within the jurisdiction of Kodakara Police Station on 28/6/07 at about 17.15 Hours. They were allegedly sitting together and conspiring to commit offences. The Assistant Sub Inspector of Police, while on other duty, gathered information about the presence of the accused persons conspiring in a shed nearby and he allegedly rushed to the scene of the occurrence. Before the petitioner could be apprehended, he had allegedly made good his escape in an autorikshaw along with another co-accused. Altogether, 11 accused persons are arrayed. The petitioner – the 3rd accused, and the 2nd accused could not be apprehended.

Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The petitioner has been granted regular bail in another crime as per the order dated 3/4/07 in B.A.No.1815/07. A condition is imposed on the petitioner that he must not enter the limits of Thrissur District. Solely with the intention of making out a case of violation of the conditions of bail and to ensure cancellation of bail, such a false allegation is being raised against the petitioner, it is contended. In these circumstances, it is prayed that the petitioner may be granted anticipatory bail.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the petitioner has been arrayed as an accused on the basis of the tangible materials collected by the Assistant Sub Inspector of Police at the scene of the crime and on the basis of what he had perceived at the scene of the crime. It is idle to assume that the official, who had taken into custody of nine accused persons – all criminals with antecedents from the scene, is making false and vexatious allegation against the petitioner alone. In fact, the investigation revealed that the 2nd accused was not involved in the crime and

therefore the allegation against him has been given up. This must convey that the police is interested only in ascertaining the true facts and, in these circumstances, the allegation that the registration of the F.I.R. is with oblique motive cannot be accepted. At any rate, the learned Public Prosecutor submits that in a serious crime like this, the petitioner may not be permitted to arm himself with an order of anticipatory bail. He must resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate having jurisdiction. He must then seek regular bail in the ordinary course, submits the learned Public Prosecutor.

4. I have been taken through the Case Diary. The learned Public Prosecutor has taken me through the statements of two independent witnesses who confirmed that they had seen the petitioner at the scene of the crime. I must alertly remind myself of the nature, quality and contours of jurisdiction that I am called upon to exercise. The extraordinary equitable discretion under Sec.438 of the Cr.P.C. ought to be invoked only sparingly and in exceptional cases and that too only in aid of justice. It cannot be invoked as a matter of course. Only when the court is satisfied that the powers of arrest which the State and its officials are invested with are about to be invoked without

mala fide and oblique motive, can such powers be normally invoke.

5. Having considered all the relevant inputs, I am not persuaded to invoke such jurisdiction under Sec.438 of the Cr.P.C. This, I am satisfied, is a fit case where the petitioner must resort to the ordinary and normal procedure of surrendering before the Investigating Officer or the learned Magistrate having jurisdiction. I have no reason to assume that the petitioner's application for regular bail will not be considered by the learned Magistrate on merits, in accordance with law and expeditiously.

6. In the result, this petition is dismissed. But I may hasten to observe that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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//true copy// P.S. To Judge